

Legal Corruption in the U.S. with Long Legal Arm

(Implication for ZTE and Huawei cases)

Mainstream and Organic Views

Dr. Wordman

‘Legal Corruption’ in this article means corruptions protected by law under a politically correct banner. This type of corruption often involves the legal system in the U.S. with lawyers, legal professionals and judges corrupting the legal system and vice versa. Therefore, legal corruption may be interpreted in a narrower sense as corruptions happening in the legal system, applying law to protect corruption. In either definition, the legal corruption in the U.S. is growing tremendously hurting individual citizens, corporations, foreign nations and the U.S. reputation. This type of corruptions is usually well protected by law and cleverly executed by the legal system from law enforcement to court system involving lawyers, consultants, law enforcement agencies and courts (judges). These people involved in the corruptions generally keep a low profile and hide behind laws.

We may start with a small case to illustrate a ‘legal corruption’. First example is the traffic law which has been used by law enforcement and court system to generate revenues for the government, court system and law enforcement benefits. Speed traps are well known in certain areas and certain times being set up mainly to catch out of jurisdiction travelers. The travelers often cannot come to the local courts to defend their cases thus willingly paying a fine which can be an unreasonable amount. Many citizens had this type of experience which might be blamed on the speeders’ own fault. But when certain small towns with highways passing through their township use speed traps to generate income to fund their entire police department or paying overtime or bonuses to their court system and law enforcement force, this borders to corruption. When electronic device is used to catch speeder, it is very easy to catch them even just with a fraction of mile per hour over the speed limit, say, 40 miles/hr. When the speed trap is overused or eagerly applied to generate money for the benefit of a small number of people, it is legal corruption. Similarly, when the law enforcement is given right to confiscate valuables and large amount of cash from a traveler under suspicion of drug or illegal activity, possible corruption may occur. The out of town owner often gives up the confiscated money out of fear or inconvenience to go through a lengthy legal process. Then the confiscated money benefits the court or a small number of individuals. These types of laws give incentive to corruptions and they do happen indeed in our country.

The U.S. passed a law, called Foreign Corruption Prevention Act (FCPA), which is meant to punish American corporations doing business with foreign country involving bribery or receiving kickback. This is a Law well-intended to discourage American companies to commit corruption. However, under this law, many foreign corporations having branches in the U.S. are subject to the jurisdiction of this law, thus the Economist magazine termed it “the American Law

with a long arm”. Foreign companies having business branches have become the major targets of the FCPA law. A recent case is revealed because the victim, Frederic Pierucci, an executive of Alston (French Company) was arrested while on a business trip to the U.S. and jailed for many months in cells for serious criminals simply because Alston had committed bribery when doing business with Indonesia. Pierucci was not involved in the Indonesia business but his name appeared as a recipient on one of the corporate emails discussing the Indonesian deal. The U.S. court under FCPA pursued him and others relentlessly seeking a huge fine. He was released after reluctantly admitted wrong doing. Then, Alston sold its natural gas burning turbine to GE along with this legal hot potato hoping GE will take care of this mess, but FCPA court demanded a fine of \$0.775B from Alston, refused GE intervention and rearrested Pierucci again. The case was finally terminated after Alston agreed to the fine. Of course this fine does not include tons of money paid to lawyers, consultants and court fees and the misery Mr. Pierucci endured. He wrote a book in French to vent his grief.

According to a Chinese language blogger, this type of legal pursuant has grown bigger and bigger in penalty size and more and more in frequency on foreign companies because the process generates such a huge monetary reward benefitting the few specialized lawyers, consultants and court judges involved with FCPA. The blogger was afraid of reprimand from the people in this FCPA “business chain”, he never published anything in English and never wanted to be named. He also claimed that a small number of people in the FCPA “business chain” always keep a low profile not wishing to be in the limelight to spoil their good business but their zest for FCPA target is growing with the size of the fines they have succeeded in obtaining. According to a list of FCPA cases the Stanford Law School tabulated, eight of the ten top cases were all foreign companies having business in the U.S. The ten with their final fine are shown as follows: Petrobras (Brazil, \$1B), Siemens (Germany, \$0.8B), Alston (France, \$0.775B), KBR (US, \$0.58B), Society General (France, \$0.57B), Teva Pharmaceutical (Israel, \$0.51B), Telia (\$0.47B), Dch-Zeffirelli’s (US, \$0.4B), BAE Systems (Britain, \$0.4B), and Total (France, \$0.4B). These huge fines of course do not include the costs of hiring and paying lawyers, consultants and court fees.

The U.S. Congress enacted the Iran and Libya Sanction Act in 1996 (ILSA, effective August, 5th). Apparently, an “ILSA business chain” had formed closely patterning the “FCPA business chain” behavior seeking foreign targets to pay huge fines using a long legal arm. The recent case of Chinese companies ZTE and Huawei smell like the same cookie came out of the same cookie cutter and baking oven used by FCPA, except it is a different team wearing ILSA chef hat. Interestingly, these ‘legal’ people associated with the U.S. justice system armed with politically correct banners, such as anti-corruption under FCPA and endangering national security under ILSA, can extend their arms extremely long to target foreign companies. They can successfully evade the executive branch’s notice, because they are shielded by the ‘political correct’ banners. Therefore, it was not surprising, the ZTE and Huawei cases occurred during the US-China trade negotiation appearing totally uncoordinated even astonished the White House trade negotiation team and the President himself.

The arrest of Huawei CFO, Ms Meng Wanzhou, draws such similarity with the Alston case except this time the ILSA business chain extended its arm even longer invoking extradition agreement with Canada. The Canadians probably acted hastily without investigating the facts or

studying the practices of the FCPA and ILSA legal teams, thus aroused the diplomatic objection from China and the White House's attention. Was the Economist correct in characterizing these legal teams having too long arms in handling their cases? Very recently, countries (for example, Myanmar) have announced that they shall use other currencies (RMB) rather than the US dollars to settle their trades, obviously designed to avoid the U.S. long legal arms. Applying the U.S. laws to foreign countries and foreign companies beyond their branches and personnel in the U.S. is definitely stretching our legal arms too long. When our legal procedure uses coercion, threat, and illegal procedures such as jailing foreign executives excessively (for unproven crime and for purpose of extracting big fine) while American executives are rarely putting in jail (for real white-collar crime committed), it makes our legal system and nation looking very unfair and bad.

It is time for us to pay attention and to clean up 'Legal Corruptions' in our country!